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**JURISDICTION OVER MOVABLE PROPERTY BROUGHT INTO A STATE WITHOUT THE OWNER'S CONSENT.**—In spite of frequent repetitions of the statement, especially in the earlier authorities, that rights in movable property depend on the law of the owner's domicile,<sup>1</sup> the rule now seems to be that, at least in so far as they are affected by transactions *inter vivos*, it is the law of the *situs* which governs.<sup>2</sup> Undoubtedly the basis for the rule is found in the complete power of the state throughout its own territory, so that any sound exception made to it must rest on an examination of that principle. Although it has often been asserted that all property within a certain territory is absolutely subject to the control of its sovereign,<sup>3</sup> it does not necessarily follow that the sovereign has absolute control over the rights of the former owner of such property. Whenever property is in the territory of a state with the consent of the owner, the state has power, not only over its physical disposition, but also over the owner's title, which he has impliedly subjected to the control of the state by placing his property under its protection.<sup>4</sup> This justifies the supremacy of the law of the *situs* in the great mass of cases, but it is not a necessary conception that rights in property are entirely dependent on its physical control, even by a sovereign; the contrary assertion would imply that national power was based rather on *brutum fulmen* than on justice or law. Although a state can control the possession of property brought within it without the consent of its owner, it is submitted that, since he has not subjected his title to its control, it has no power to affect title,<sup>5</sup> unless it has personal jurisdiction over him.

Although, because of the infrequency with which such situations arise, the cases in point are necessarily few, what authority there is seems to be consistent with the view here advanced. Thus it has been expressly held that where property is transferred in a manner which passes a good title by the law of the *situs*, but not by the law of the state where the owner is domiciled and from which the property was taken without his consent, if it is brought back to that state he can successfully assert his title to it.<sup>6</sup> In apparent recognition of this doctrine, it has also been held that an attachment, levied in a state where the property was brought without the owner's consent, will be dissolved. *Houghton v. May*, 17 Ont. W. Rep. 750 (High Ct., Dec. 15, 1910).<sup>7</sup>

<sup>1</sup> See *Ames Iron Works v. Warren*, 76 Ind. 512; STORY, CONFLICT OF LAWS, § 376 *et seq.*

<sup>2</sup> *Green v. Van Buskirk*, 5 Wall. (U. S.) 307; 7 Wall. (U. S.) 139; *Castrique v. Imrie*, L. R. 4 H. L. 414, 429. See WHARTON, CONFLICT OF LAWS, § 297 *et seq.*

<sup>3</sup> See STORY, CONFLICT OF LAWS, § 390; DICEY, CONFLICT OF LAWS, 378.

<sup>4</sup> But this power is not always exercised. See *The Belgenland*, 114 U. S. 355. The exemption from jurisdiction of warships, ambassadors, etc., seems to be based on reciprocal forbearance. See *The Schooner Exchange v. M'Faddon*, 7 Cranch (U. S.) 116, 136; HALLECK, INTERNATIONAL LAW, 230; 24 HARV. L. REV. 489.

<sup>5</sup> Somewhat analogous is the rule that a creditor cannot be deprived of his right by the debtor's discharge in insolvency, given by a state in which the creditor is not domiciled, and to whose jurisdiction he has not submitted. *Baldwin v. Hale*, 1 Wall. (U. S.) 223; *Felch v. Bugbee*, 48 Me. 9. Similarly, on principle, there should be no jurisdiction for garnishment unless the state has jurisdiction over both the debtor and creditor. See 23 HARV. L. REV. 134.

<sup>6</sup> *Edgerly v. Bush*, 81 N. Y. 199; *Wylie v. Speyer*, 62 How. Prac. (N. Y.) 107. See *Todd v. Armour*, 19 Sc. L. R. 656.

<sup>7</sup> See *Powell v. McKee*, 4 La. Ann. 108; *Deyo v. Jennison*, 10 Allen (Mass.) 410; *Timmons v. Garrison*, 4 Humph. (Tenn.) 148. The authority of most of these cases

Aside from a few *dicta*,<sup>8</sup> the decisions apparently opposed to this view are distinguishable. A state may try a person criminally for a violation of its laws, though he was illegally and against his will brought within its jurisdiction from another state, unless that state objects on the ground of some treaty right.<sup>9</sup> Here, however, though there might be some question whether the court ought to take jurisdiction,<sup>10</sup> there can be no doubt that the sovereign has complete power over the person of the defendant, and that by violating its laws he has subjected himself to the risk of punishment in such a contingency. It is more difficult consistently to explain the well-recognized power of prize courts to pass title to captured vessels good against the whole world.<sup>11</sup> But on theory it would seem that when a vessel is sent to sea in time of war, its owner takes the risk of its capture, and in that case, for his own protection, impliedly submits the determination of his rights to a court which is recognized by the law of nations to have jurisdiction.<sup>12</sup>

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CORPORATE SURETYSHIP AS A BRANCH OF INSURANCE. — The advent of the modern surety company has produced a series of decisions in which it has been repeatedly asserted that contracts entered into by these corporations for the purposes of gain are to be regarded as insurance policies, and governed by the law applicable thereto, rather than by the specialized body of doctrine embraced in the law of suretyship and guaranty.<sup>1</sup> In view of the comparatively recent origin of this business, the decisions are few which show more than a general tendency to treat the bond or policy of a surety company as subject to different rules than those governing the contract of a private surety. Yet in several important respects this tendency is very marked.

Of growing significance are the decisions that surety companies must comply with the insurance laws governing incorporation<sup>2</sup> and the right to do business.<sup>3</sup> Similarly, the right of a corporate surety to make its own contract is abridged by enactments declaring that no breach of

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is weakened by the fact that the creditor is usually instrumental in getting the property into the jurisdiction, so that the general rule would apply, that an attachment based on possession illegally obtained is void. See *Ilsley v. Nichols*, 12 Pick. (Mass.) 270; *Closson v. Morrison*, 47 N. H. 482.

<sup>8</sup> See *Cammell v. Sewell*, 5 H. & N. 728; *Alcock v. Smith*, [1892] 1 Ch. 238, 267.

<sup>9</sup> *Pettibone v. Nichols*, 203 U. S. 192; *Ex parte Scott*, 9 B. & C. 446.

<sup>10</sup> Where the defendant is enticed into the state by fraud so as to be served with process in a civil proceeding, the court will not take jurisdiction. *State v. Vauger*, 29 N. J. L. 384. As to privilege of non-resident parties and witnesses from service of process, see 23 HARV. L. REV. 474.

<sup>11</sup> See *Hughes v. Cornelius*, 2 Show. 232; *The Richmond v. United States*, 9 Cranch (U. S.) 102; *Grant v. McLachlin*, 4 Johns. (N. Y.) 34.

<sup>12</sup> A vessel in port in time of peace is generally there with the owner's consent, so there is no difficulty in supporting the ordinary doctrine of admiralty jurisdiction. But in an international reference it was decided, in accord with the theory of this note, that where a vessel was taken to Nassau by a mutinous crew against the owner's consent, there was no jurisdiction to free the slaves on board. See WHEATON, INTERNATIONAL LAW, 6 ed., cxxxi (The Creole).

<sup>1</sup> See *Bank of Tarboro v. Fidelity & Deposit Co.*, 128 N. C. 366; *American Surety Co. v. Pauly*, 170 U. S. 133.

<sup>2</sup> *People v. Rose*, 174 Ill. 310.

<sup>3</sup> *Clafin v. U. S. Credit System Co.*, 165 Mass. 501.